

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

NATALIE S.,

Claimant,

and

THE REGIONAL CENTER OF ORANGE
COUNTY,

Service Agency.

OAH No. 2005100523

DECISION

James Ahler, Administrative Law Judge, Office of Administrative Hearings, heard this matter in Santa Ana, California, on June 5, 2006.

Natalie S., Claimant, was represented by David S., her father and advocate, but she was not personally present at the fair hearing.

Mary Kavli, Program Manager, represented the Regional Center of Orange County, a service agency.

On June 5, 2006, the matter was submitted.

ISSUES

Did the service agency's denial of a request for funding to permit one of Claimant's parents to attend the 2005 Defeat Autism Now conference in Long Beach, California, violate the Lanterman Act?

Does the service agency's written procedure 502 - related to funding attendance at conferences - violate the Lanterman Act or, in the alternative, did the service agency's application of its written policy in this matter violate the Lanterman Act?

Did the service agency violate the Lanterman Act by failing to provide Claimant's parents with notice of a utilization resource group meeting in which the service agency considered the request for funding to attend the 2005 Defeat Autism Now conference?

Did the service agency violate the Lanterman Act by denying Claimant's parents the opportunity to participate in the development of Claimant's IPP?

What remedy, if any, should be provided for any violation(s) of the Lanterman Act in this matter?

FACTUAL FINDINGS

The Lanterman Developmental Disabilities Services Act

1. The Lanterman Developmental Disabilities Services Act (the Lanterman Act) provides facilities and services to meet the needs of persons with developmental disabilities, regardless of age or degree of handicap. The purpose of this comprehensive statutory scheme is twofold: to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from their family and the community; and, to enable these persons to approximate the pattern of everyday living of nondisabled persons the same age and to lead more independent and productive lives in the community.¹

The statutory scheme requires state agencies, such as the Department of Developmental Services (the DDS), and private entities, such as regional centers (one of which is the Regional Center of Orange County) to implement the Lanterman Act. The DDS has jurisdiction over the execution of laws related to the care, custody and treatment of developmentally disabled persons. Regional centers - private nonprofit community agencies under contract with the DDS - are charged with the duty of providing developmentally disabled persons within the service agency's catchment with access to the facilities and services best suited to them throughout their lifetime.²

The IPP Concept

2. Welfare and Institutions Code sections 4646 and 4646.5 set forth criteria related to the development and modification of an individualized program plan (IPP).

Once a developmentally disabled person (known as a "consumer") is found to be eligible for regional center services and supports, a written IPP must be completed within 60 days. The IPP is developed through a collaborative effort involving a regional center and the consumer and/or the consumer's representative(s). The IPP planning process involves

¹ See Welfare and Institutions Code section 4501; see, also, *Williams v. Macomber* (1990) 226 Cal.3d 225, 228.

² See *Mason v. Office of Administrative Hearings* (2001) 89 Cal.App.4th 1119, 1125-1126. The Lanterman Act is found at Welfare and Institutions Code section 4500 et seq.

gathering information and conducting assessments to identify the consumer's life goals, capabilities, strengths, preferences, barriers, and concerns or problems.

Assessments must be conducted by qualified individuals and must be performed in natural environments whenever possible. Information must be obtained from the consumer, the consumer's parents and other family members, friends, advocates, any providers of services and supports, and other interested agencies. The assessment process must reflect an awareness of, and sensitivity to, the lifestyle and cultural background of the consumer and the family.

An IPP must include a statement of the consumer's goals, based on the consumer's needs, preferences, and life choices. An IPP must contain specific, time-limited objectives to implement the identified goals and must address the consumer's needs. Objectives must allow for the measurement of progress and for the monitoring of service delivery.

Identified goals and objectives should maximize a consumer's opportunity to develop relationships and participate in community life in housing, work, school, and leisure activities. Identified goals and objectives should increase the consumer's control over his or her life, should assist the consumer in acquiring increasingly positive roles in community life, and should be directed towards developing competency to help accomplish these goals.

An IPP must be signed before it is implemented. If a consumer and/or his or her representative do not agree with all of the components contained in an IPP, the area(s) of disagreement may be indicated; but, a disagreement with specific IPP components does not prevent implementation of those services and supports to which there is no disagreement. The regional center must send written notice advising the consumer and/or his or her representative of the right to a fair hearing whenever a disagreement exists.

Through the Lanterman Act, the Legislature has attempted to ensure that the provision of services is effective in meeting IPP goals, that the IPP reflects the preferences and choices of the consumer, and that the IPP is cost-effective in its use of public resources.³

Inflexible Policies Denying Appropriate Services Are Prohibited

3. A service agency's reliance on a fixed policy to deny a particular kind of service the Lanterman Act was designed to provide in appropriate circumstances is inconsistent with the Lanterman Act's stated purpose of providing services sufficiently complete to meet the needs of each person with developmental disabilities. The Lanterman Act contemplates that appropriate services will be made available to each client and will be selected on an individual basis.

³ See Welfare and Institutions Code sections 4646 and 4646.5.

In determining what kinds of services are appropriate, a regional center must consider every possible way to assist families in maintaining their developmentally disabled children at home when living in the family home is in the best interest of the child. This requirement does not compel the service agency to provide the family with all requested services in every instance, because whether specific services are appropriate and whether they should be provided depends upon all the circumstances. But, a service agency may not adopt or implement an inflexible policy denying all consumers services authorized by the Lanterman Act.⁴

Claimant's Status

4. Little information was provided directly concerning Natalie S. (Claimant) and her actual needs as a developmentally disabled child. Claimant's father (David) did not testify concerning her living situation or her needs, although he was given the opportunity.

Instead, the majority of the fair hearing involved a review of the seemingly combative relationship between David and the Regional Center of Orange County (the service agency or the RCOC), and how the service agency came to deny a request for funding that would have helped to pay for one of Claimant's parents to attend the 2005 Defeat Autism Now Conference in Long Beach (the DAN Conference).

5. Claimant was born on September 2, 2002. She lives with her parents, David and Shelly, in the family home in Fullerton, California.⁵ Her father is an attorney. Claimant has an older brother living at home. The ultimate goal is for Claimant to reside in the least restrictive environment, which is currently the family home. Because of her age and developmental levels, Claimant requires assistance in all self-help areas, although she can ambulate, sit by herself, and communicate. For reasons that were not established, Claimant has a casein free/gluten free diet. Claimant has not received vaccinations beyond the basic MMR vaccination. Claimant is under the care of a medical doctor, but the extent to which her developmental disability might be biomedically related was not established.

On January 4, 2005, Claimant was determined to be eligible for Early Start services. Thereafter, Claimant participated in the Early Start Program before turning three years of age.⁶ Karina Guerrero (Guerrero), an RCOC Early Start service coordinator, was assigned

⁴ See *Williams v. Macomber*, *Ibid.*, at 233.

⁵ The majority of the information relating to Claimant's situation was drawn from the written materials received in evidence. The most reliable source was the Initial Annual Review – Draft Copy – authored by Jill Brumett, a service coordinator with the Regional Center of Orange County. However, a final IPP has not been prepared and signed.

⁶ The Early Start Program is California's response to federal legislation designed to provide early intervention services in a coordinated, family-centered manner to "infants and toddlers" (i.e., children under the age of three) who are at risk for developmental delays or who already have such delays. See Government Code section 90514. An individualized family services plan (IFSP) is developed to meet the unique needs of the child and the family. Quarterly developmental assessments are provided thereafter in the parents' home free of charge. Specific

by the service agency to assist Claimant and her family. An Individualized Family Service Plan (IFSP) review meeting was scheduled for June 27, 2005.

Before the June 27, 2005, IFSP review meeting, Claimant received various services through the Early Start program including a 155 hours per month Applied Behavioral Analysis (ABA) program through ACES, Inc., one hour per week of speech-language therapy, one hour per week of pediatric occupational therapy, eight hours per month of respite plus transportation, and RCOC case monitoring as needed. No provision was made for Claimant's parents to attend conferences, although David mentioned he had "discussed attending a parent training conference (DAN Conference in October, 2005)" in a letter dated April 7, 2005.

The May 10, 2005, Communication

6. On May 10, 2005, David wrote to Guerrero. His letter stated in part:

"Effective immediately, we request that the Regional Center of Orange County (RCOC) advice [sic] us in writing prior to any meeting, in person or telephonically, regarding our daughter Natalie. We intend to be present and to participate in all meetings and telephone calls . . ."

Guerrero acknowledged receipt of David's May 10, 2005 letter.

The June 27, 2005, IFSP Meeting

7. Before attending the June 27, 2005, meeting, David told Guerrero he did not want anyone else from the service agency to attend the review meeting. Guerrero agreed.

When Guerrero arrived at the family home for the June 27 meeting, Claimant's parents, Christina Galeano (a representative from ACES, Inc., the organization providing Claimant with ABA intervention services) and Nicole Omstead (a consultant with Autism Consultation & Treatment) were present. David said he was going to tape-record the meeting, which Guerrero agreed to. David said he would prepare the written IFSP, which was highly unusual since Guerrero had assumed that responsibility in the past without exception. Guerrero described David as acting more like an attorney than a father.

At the conclusion of the June 27 meeting, David presented a proposed 27 page typewritten IFSP which stated at page 24 in part:

services, based on the individual need of the child, include physical and/or occupational therapy, respite care, assistive technology, case management, and home care. Early intervention services are provided, purchased or arranged by a regional center or local education agency. Early intervention services - including evaluation, assessment and service coordination - are provided to eligible infants and toddlers and their families at no cost to the family. Early Start is funded by federal funds (IDEA, Part C) and State General Funds.

“Parent Training: Parents shall attend four conferences or seminars per year (approximately one per quarter) directed toward parents with autistic children (e.g., DAN, TACA, etc.).

The parents shall provide adequate advanced notice and related information to Service Coordinator of the desired conference, and the Service Coordinator shall obtain approval for reimbursement. After the conference the parents shall submit an [sic] request for reimbursement of the conference fee in accord with Regional Center’s established guidelines.”

When Guerrero reviewed the “parent training” section of the proposed IFSP, she told David and Shelly it was too open-ended and that she had no idea what they would be asking the service agency to pay for in the future. She advised them specific authorization had to be obtained for specific conferences. Guerrero made no promise regarding service agency funding as outlined in the “parent training” section of the proposed IFSP.

Guerrero signed page 27 of the proposed IFSP to confirm her presence and participation at the June 27 meeting, but her signature did not constitute an agreement or bind the service agency to provide any funding proposed in the draft IFSP.

8. Guerrero returned to the service agency and reviewed RCOC procedure 502, which related to requests for support or scholarship funding by parents wishing to participate in a conference. Guerrero advised David of RCOC procedure 502.

RCOC Procedure 502

9. RCOC procedure 502 was adopted in the mid-1990s. It was developed by service agency staff, consumers, parents and family members of persons with developmental disabilities, and an attorney. It provided in part:

“Purpose: In an effort to support parent/family participation at seminars and/or conferences which provide beneficial information to enhance the family’s knowledge of the family member’s developmental disability, Regional Center of Orange County (RCOC) staff may request scholarship funds on behalf of a parent or family member. The request will be processed following the procedure outlined below.

A Utilization Review Group (URG), which may include a parent, consumer and designated RCOC staff, will review the scholarship request. Requests shall be made at least 30 days in advance of the conference date to allow time to process the scholarship request and take advantage of registration rates and/or other scholarships, which may be available through the organizers of the conference . . . ”

The term “parent” as used in the preceding paragraph was not intended to mean the parent or the family member making the specific request for funding submitted to the URG, but referred instead to an unrelated parent of a service agency client who might be attending

the URG meeting for the purpose of bringing an additional perspective to the deliberative process. In fact, parents and family members who made requests for funding never attended URG meetings, each of which was an “internal meeting” according to Mary Kavli, a knowledgeable RCOC program manager who was partially responsible for the development of procedure 502.

10. Procedure 502 contained a sequence of events that was to be followed in considering whether to fund attendance at a conference. Under this sequence, after a family member requested funding to attend a conference, the service coordinator was required to gather information and provide it to the URG. Procedure 502 did not include a provision for the family member or parent to attend the URG meeting, nor does it include a provision authorizing anyone other than the service coordinator to make a presentation at such a meeting. As a matter of practice, family members requesting funding do not attend URG meetings.

Under procedure 502, if approval for funding for a parent to attend a conference is given, then a purchase of service form is prepared and the consumer’s IPP is amended to reflect the service request and the funding authorization for it. The IPP amendment is made for auditing purposes. The URG meeting does not constitute a part of the formal IPP decision-making process in which the consumer, parent or family member had a right to participate in a collaborative fashion.

Under procedure 502, all URG decisions, rationale and case management activities were required to be documented.

The Processing of the Request for Funding

11. In accordance with procedure 502, Guerrero determined that Claimant’s parents had not previously received scholarship funding, that several unidentified benefits would be obtained by attending the conference, that the subject matter of the conference related to Claimant’s developmental disability, that there were existing family resources, that paying the \$130 conference fee⁷ would constitute a financial hardship, that the parent attending the conference would share information received at the conference with others and complete a consumer satisfaction survey, and that the existence of other sources of funding for the conference was unknown. Guerrero noted that a possible problem was that the 2005 Defeat Autism Now conference (the 2005 DAN Conference) was going to be held on October 27-October 30, 2005, after Claimant’s third birthday and it was unknown at the time if Claimant was going to be eligible to receive services under the Lanterman Act.

12. No IFSP arising out of the June 27, 2005, review meeting was finalized due to disagreements between the service agency and Claimant’s parents. In fact, David asked that an IFSP be removed from Claimant’s case record, a request the service agency granted.

⁷ According to the 2005 DAN Conference registration form, the cost of attending the conference for one day was \$135, the cost of attending for two days was \$260, and the cost of attending three days was \$350.

13. Before Claimant turned three years of age, it was determined that she was eligible to receive regional center services under the Lanterman Act by reason of a diagnosis of autism.

The request for funding to help one of Claimant's parents to attend the 2005 DAN Conference was made well before Claimant turned three years old. Claimant's parents provided the service agency with documentation taken from the Internet concerning the 2005 DAN Conference.⁸ That documentation set forth the biographies of many of the speakers (most of whom were medical doctors or persons holding doctorate degrees). The thrust of the conference appeared to be the application of the DAN biomedical approach to treating autistic spectrum disorders including carbohydrate diets, vitamins, neurotoxic influences in autism, gastrointestinal disorders, ABA, coping with stress, and vaccine safety.

14. Before Claimant turned three years of age, she was transitioned from the Early Start program into the mainstream RCOC program for developmentally disabled persons. Jill Brumett was assigned to become Claimant's service coordinator. Guerrero told Brumett that no action had been taken on the parents' request for conference funding. Brumett reviewed Claimant's case file including the screenings, the assessments, the correspondence and other documentation.

On September 1 or 2, 2005, Brumett met with Claimant's parents, Nicole Omstead, Christina Galeano to collaborate and prepare an IPP. While an IPP was never finalized due to disagreements between the parents and the service agency⁹, Brumett's draft IPP contained information about Claimant's situation including the parents' desire "to attend the Defeat Autism Now (DAN) conference in October." The IPP draft, a copy of which was provided to Claimant's parents, indicated Brumett would "submit request to Utilization Resource Group once additional information is obtained per RCOC procedure for conference funding."

Thereafter, Brumett discussed the request for funding with Vikki Corso, an RCOC supervising service coordinator who, in turn, referred Brumett to Janis White, Ed.D., the service agency's chief executive officer. By the time Brumett spoke with White, White had become aware that several other families besides Claimant's had requested funding to attend the 2005 DAN Conference in Long Beach. In response to these requests, White had looked into previous DAN conferences and she discussed the value and relevance of those prior conferences with others.

Brumett spoke with White about Claimant's parents' request for funding. White said there were less expensive alternatives available to obtain the information being presented at the 2005 DAN Conference than personal attendance, including the service agency's purchase

⁸ The mission statement in that documentation represented, "DAN (Defeat Autism Now!) is dedicated to educating parents and clinicians regarding biomedically-based research, appropriate testing and safe and effective interventions for autism."

⁹ Evidently the IPP has become the source of a separate request for another fair hearing.

of compact discs made at the conference which would be made available to all interested families. Nevertheless, White told Brumett to proceed with the parents' request for funding through the URG and to obtain their determination.

Brumett had participated in 60-90 URG meetings by September 2005. No parent requesting funding had ever attended a URG meeting in which she was involved.

On September 30, 2005, Brumett made application to present the parents' request for funding at the next URG meeting. Brumett did not recall reading David's letter dated May 10, 2005, requesting that Claimant's parents be advised of any meeting regarding Claimant. Brumett did not provide David with notice that the request for funding would be presented at a forthcoming URG meeting. Brumett did not invite David to attend that meeting. It simply did not occur to her under the circumstances.

Brumett did not investigate any other funding sources which might be available to financially help one of Claimant's parents to attend the 2005 DAN Conference.

15. On October 3, 2005, a URG meeting was held to consider Claimant's parents' request for funding, one of many consumer requests considered by the URG that day, most of which were unrelated to the 2005 DAN Conference. Emily Lloyd, an area manager, and Vikki Corso, a services coordinator, were present at this meeting.

Brumett presented the request. Brumett essentially told the others what she knew about the request: Claimant was three years old, Claimant had a diagnosis of autism, Claimant's family had not previously attended a conference, additional childcare was not being requested, and Claimant's parents would share any information they received at the conference with the community through the community support system. It was obvious to all in attendance at the URG that Claimant lived with her parents and that the main goal was to maintain Claimant in the family home. It is likely Claimant's restricted diet and vitamin taking was not discussed. Guerrero was not present at the URG meeting, although her comments in Claimant's case file were available for review.

After considering the matter, the URG denied the request for funding.

16. With regard to the other requests for funding to attend the 2005 DAN Conference, they, too, were denied (with one exception) on the grounds that similar information to that being presented at the 2005 DAN Conference was available to interested persons in the family resources library and the presentations at the 2005 DAN Conference would become available through the purchase of conference CDs. With regard to the one exception, funding was provided to one parent, who was coincidentally a service agency board member, on the basis that the service agency would have a representative at the conference who could provide some firsthand feedback concerning the conference.

17. On October 4, 2005, White sent a memo to Brumett and to the other consumer service coordinators concerning applications made by parents and family members for

funding to attend the 2005 DAN Conference. That memo stated that there was expert information in the service agency's family resource library on many of the topics that were being discussed at the 2005 DAN Conference, and that two experts would be speaking at the regional center in the near future on Applied Behavioral Analysis and Discrete Trial Training. In addition, White indicated in the memo that the service agency was going to purchase CDs of the 2005 DAN Conference "so that many other families can listen to them." White also mentioned that the service agency had tapes of the 2004 DAN Conference, and that a streaming video of the 2005 DAN Conference held in Boston was available for free over the Internet. White's memo concluded, "I hope that this information will help you in your denial letter."

18. On October 10, 2005, Brumett sent a denial letter to Claimant's parents, advising them that the service agency would not fund their attendance at the 2005 DAN Conference. That denial letter stated the service agency had current information in its library which they were welcome to review and that the service agency was going to purchase the 2005 DAN Conference CDs, which would be available to them. A form accompanying that denial letter stated the parents could discuss and/or appeal from the denial.

Brumett made no effort to investigate other sources of funding for the 2005 DAN Conference.

19. It appears the RCOC's decision to deny the request for funding was based, in small part, on the belief of some RCOC staff members, including Dr. Arlene Downing (Dr. Downing), a developmental pediatrician, that the information being presented at the DAN conferences was "experimental and investigative."

20. White testified that a part of her duties include evaluating the conferences available to service agency consumers and their families, determining if similar information to that being presented at those conferences existed and if it was available, and then making decisions about the cost-effectiveness of family members attending a particular conference. Before making any recommendations, White specifically asked Dr. Downing about the content of the DAN conferences. White was told the information being presented was not empirically validated.¹⁰

21. According to White, the service agency does not have an inflexible policy by which the service agency automatically denies a consumer or family's request to attend a conference. Attendance at conferences is frequently funded through the service agency. Funding is provided when circumstances support such funding and when reasonable alternatives to personal attendance do not exist. The existence of the service agency's procedure 502 supported that credible testimony.

¹⁰ According to White, the service agency makes the DAN materials and other alternative materials available to consumers and their families even though there are some questions about the validity of the information "because it's a library." The presence of these informational materials in the service agency's library did not constitute an endorsement of them or the views expressed in them. White said a warning were supposed to accompany materials with an experimental or investigative bias.

22. A consumer or a family does not have the right to funding simply because the conference has a question and answer session, or because there may be direct contact between the consumer, family members, and speakers at a conference. While these factors are undoubtedly valuable aspects of personally attendance at some conferences, these matters do not compel the funding of a conference.

The fact that the entity sponsoring the conference is vendored by the service agency, as was the case here, does not compel the granting of a consumer or family's request for funding to attend a conference which is sponsored by that entity.

Again, the weight of the credible evidence supported White's testimony in this regard, including the content and application of procedure 502.

23. Emily Lloyd, an area manager who participated in the URG meeting in which the request for funding was denied, acknowledged that David was not told about nor asked to attend that meeting. While all of the factual details resulting in the denial may not have been included in case management notes related to the URG's decision, it was clear to Lloyd that the family's preference was to have a parent personally attend the conference. Lloyd was aware of what material was being presented at the 2005 DAN Conference, although she was unaware of its specific application to Claimant other than she knew Claimant was diagnosed with autism, Claimant's age, and Claimant's general circumstances.

Lloyd found no real benefit to having one of Claimant's parents attend the 2005 DAN Conference when the CDs of the conference were going to be made available.

24. On October 10, 2005, Claimant and her family were given a Notice of Proposed Action, the denial letter, and several other documents by which they were notified that their request for funding for the 2005 DAN Conference had been denied.

25. In closing argument, David said neither he nor his wife attended any session of the 2005 DAN Conference. Since then, according to David, his wife reviewed some of the CDs obtained from the 2005 DAN Conference and she told him there were some missing sessions and that no question and answer sessions were included in the CDs that were made available.

26. The next DAN conference will be held in Seattle. The exact contents of that conference were unknown to David.

Jurisdictional Matters

27. On October 12, 2005, David filed a fair hearing request for the service agency's "refusal to fund special training for parents that is directly related to caring for Claimant" and more specifically for failing to fund attendance at the 2005 DAN Conference. David indicated in that request for the fair hearing that that the relief he sought was for the

“RCOC to fund the special training as requested . . . to fund attendance by one of Natalie’s parents at next DAN conference and travel expenses as necessary.”

On November 17, 2005, the service agency received a subpoena duces tecum from David seeking the production of a variety of materials. Thereafter, the service agency argued to Presiding Administrative Law Judge Steven Adler that David’s request for the production of documents was unclear and unreasonable. Several discovery motions followed. PALJ Adler ultimately determined the subpoena duces tecum should be denied in its entirety.

On January 25, 2006, David filed a First Amended Fair Hearing Request, stating a fair hearing was being requested because of the service agency’s refusal to fund attendance at the 2005 DAN Conference, the service agency’s use of procedure 502 to amend or revise Claimant’s IPP, the service agency’s failure to provide Claimant’s family with notice of meetings used to develop or revise her IPP, and the service agency’s failure to permit Claimant’s parents to participate in such meetings.

On June 5, 2006, the record in the fair hearing was opened. The issues to be determined were identified. Sworn testimony and documentary evidence was received. Closing arguments were given, the record was closed, and the matter was submitted.

Evaluation

28. No signed IFSP and no signed IPP required funding. Second, in deciding not to authorize funding, the RCOC took into account Claimant’s parents’ request for funding to personally attend the 2005 DAN Conference, which was balanced against the range of service options designed to meet the same goals as personally attending, the effectiveness of each option, and cost-effectiveness. The service agency did not have a blanket policy of denying all requests for funding to attend conferences, but determined such funding on an individual basis according to needs. The RCOC considered relevant information in reaching its decision to deny funding.

Procedure 502 was designed to supported family participation at outside seminars and conferences which provide beneficial information that would enhance a family’s knowledge of the family member’s developmental disability. The specific process set forth in procedure 502 was also consistent with the Lanterman Act. While Procedure 502 did not include a provision for a family member to attend the URG meeting where the request for funding was being presented, nor a provision authorizing anyone other than the service coordinator to make such a presentation at a URG meeting, it did provide for the service coordinator to present the family’s request and reasons for it. Procedure 502 did not require the denial of all requests; it set forth a process that was to be followed in evaluating the requests.

On September 1 or 2, 2005, Brumett met with Claimant’s parents and several providers to collaborate and prepare an IPP, but an IPP was never finalized. It was not established that claimant’s parents were denied the opportunity to participate in the development of Claimant’s IPP or that the URG meeting was the equivalent of an IPP

meeting. The requirement that the IPP be amended was not to show that there was an IPP agreement or disagreement, or the need or lack of need for services, but to serve an accounting purpose.

It was not established that claimant's parents were denied the opportunity to participate in the development of Claimant's IPP. To the contrary, they were active participants in a meeting that was held to develop an IPP and have actively participated thereafter by filing requests for fair hearings contesting service agency determinations.

No violations of the Lanterman Act were established. The service agency established it handled Claimant's parents' request for funding for one of them to attend the 2005 DAN Conference in a reasonable and lawful fashion.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. Welfare and Institutions Code section 4712, subdivision (j) provides:

“(j) A service agency shall present its witnesses and all other evidence before the Claimant presents his or her case unless the parties agree otherwise or the hearing officer determines that there exists good cause for a witness to be heard out of order. This section does not alter the burden of proof.”

2. Evidence Code section 500 provides:

“Except as otherwise provided by law, a party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief or defense that he is asserting.”

3. Evidence Code section 550 provides:

“(a) The burden of producing evidence as to a particular fact is on the party against whom a finding on the fact would be required in the absence of further evidence.

(b) The burden of producing evidence as to a particular fact is initially on the party with the burden of proof as to that fact.”

4. The party bearing the burden of proof on an issue must present evidence sufficient to establish in the mind of the trier of fact or the court a requisite degree of belief (commonly proof by a preponderance of the evidence) to prevail on that issue. The burden of proof does not shift during trial - it remains with the party who originally bears it. Unlike the burden of proof, the burden of producing evidence may shift between plaintiff and defendant throughout the trial. Initially, the burden of producing evidence as to a particular fact rests on the party with the burden of proof as to that fact. If that party fails to produce

sufficient evidence to make a prima facie case, it risks an unfavorable determination. But, once that party produces evidence sufficient to make its prima facie case, the burden of producing evidence shifts to the other party to refute the prima facie case. Even though the burden of producing evidence shifts to the other party, that party need not offer evidence in reply, but the failure to do so risks an adverse determination. Once a prima facie showing is made, it is for the trier of fact to say whether or not the crucial and necessary facts have been established. *Sargent Fletcher, Inc. v. Able Corp.* (2003) 110 Cal.App.4th 1658, 1667-1668.

5. In administrative proceedings, as in ordinary civil actions, the party asserting the affirmative generally has the burden of proof, including the burden of persuasion by a preponderance of the evidence. *McCoy v. Board of Retirement* (1986) 183 Cal.App.3d 1044, 1051-1052.

Statutory Authority

6. Welfare and Institutions Code section 4512, subdivision (b) provides in part:

“(b) ‘Services and supports for persons with developmental disabilities’ means specialized services and supports . . . directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, normal lives. The determination of which services and supports are necessary for each consumer shall be made through the individual program plan process. The determination shall be made on the basis of the needs and preferences of the consumer or, when appropriate, the consumer’s family, and shall include consideration of a range of service options proposed by individual program plan participants, the effectiveness of each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option. Services and supports listed in the individual program plan may include, but are not limited to, diagnosis, evaluation, treatment, personal care, . . . education, . . . counseling of the individual with a developmental disability and of his or her family, . . . information and referral services, . . . behavior training and behavior modification programs, . . . specialized medical and dental care, . . . technical and financial assistance, . . . training for parents of children with developmental disabilities, . . . and transportation services necessary to ensure delivery of services to persons with developmental disabilities. Nothing in this subdivision is intended to expand or authorize a new or different service or support for any consumer unless that service or support is contained in his or her individual program plan.”

7. Welfare and Institutions Code section 4646 provides in part:

“(a) It is the intent of the Legislature to ensure that the individual program plan and provision of services and supports by the regional center system is centered on the individual and the family of the individual with developmental disabilities and takes

into account the needs and preferences of the individual and the family, where appropriate, as well as promoting community integration, independent, productive, and normal lives, and stable and healthy environments. It is the further intent of the Legislature to ensure that the provision of services to consumers and their families be effective in meeting the goals stated in the individual program plan, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources.

(b) The individual program plan is developed through a process of individualized needs determination. The individual with developmental disabilities and, where appropriate, his or her parents, legal guardian or conservator, or authorized representative, shall have the opportunity to actively participate in the development of the plan.

(c) An individual program plan shall be developed for any person who, following intake and assessment, is found to be eligible for regional center services. These plans shall be completed within 60 days of the completion of the assessment . . .

(d) Individual program plans shall be prepared jointly by the planning team. Decisions concerning the consumer's goals, objectives, and services and supports that will be included in the consumer's individual program plan and purchased by the regional center or obtained from generic agencies shall be made by agreement between the regional center representative and the consumer or, where appropriate, the parents, legal guardian, conservator, or authorized representative at the program plan meeting.

(e) Regional centers shall comply with the request of a consumer, or where appropriate, the request of his or her parents, legal guardian, or conservator, that a designated representative receive written notice of all meetings to develop or revise his or her individual program plan and of all notices sent to the consumer pursuant to Section 4710. The designated representative may be a parent or family member.

(f) If a final agreement regarding the services and supports to be provided to the consumer cannot be reached at a program plan meeting, then a subsequent program plan meeting shall be convened within 15 days, or later at the request of the consumer or, when appropriate, the parents, legal guardian, conservator, or authorized representative or when agreed to by the planning team. Additional program plan meetings may be held with the agreement of the regional center representative and the consumer or, where appropriate, the parents, legal guardian, conservator, or authorized representative.

(g) An authorized representative of the regional center and the consumer or, where appropriate, his or her parents, legal guardian, or conservator, shall sign the individual program plan prior to its implementation. If the consumer or, where appropriate, his or her parents, legal guardian, or conservator, does not agree with all components of

the plan, they may indicate that disagreement on the plan. Disagreement with specific plan components shall not prohibit the implementation of services and supports agreed to by the consumer or, where appropriate, his or her parents, legal guardian, or conservator. If the consumer or, where appropriate, his or her parents, legal guardian, or conservator, does not agree with the plan in whole or in part, he or she shall be sent written notice of the fair hearing rights, as required by Section 4701.”

8. Welfare and Institutions Code section 4546.5 provides in part:

“(a) The planning process for the individual program plan described in Section 4646 shall include all of the following:

(1) Gathering information and conducting assessments to determine the life goals, capabilities and strengths, preferences, barriers, and concerns or problems of the person with developmental disabilities. For children with developmental disabilities, this process should include a review of the strengths, preferences, and needs of the child and the family unit as a whole. Assessments shall be conducted by qualified individuals and performed in natural environments whenever possible. Information shall be taken from the consumer, his or her parents and other family members, his or her friends, advocates, providers of services and supports, and other agencies. The assessment process shall reflect awareness of, and sensitivity to, the lifestyle and cultural background of the consumer and the family.

(2) A statement of goals, based on the needs, preferences, and life choices of the individual with developmental disabilities, and a statement of specific, time-limited objectives for implementing the person’s goals and addressing his or her needs. These objectives shall be stated in terms that allow measurement of progress or monitoring of service delivery. These goals and objectives should maximize opportunities for the consumer to develop relationships, be part of community life in the areas of community participation, housing, work, school, and leisure, increase control over his or her life, acquire increasingly positive roles in community life, and develop competencies to help accomplish these goals.

...

(4) A schedule of the type and amount of services and supports to be purchased by the regional center or obtained from generic agencies or other resources in order to achieve the individual program plan goals and objectives, and identification of the provider or providers of service responsible for attaining each objective, including, but not limited to, vendors, contracted providers, generic service agencies, and natural supports. The plan shall specify the approximate scheduled start date for services and supports and

shall contain timelines for actions necessary to begin services and supports, including generic services.

(5) When agreed to . . . a review of the general health status of the adult or child including a medical, dental, and mental health needs shall be conducted .

..

(6) A schedule of regular periodic review and reevaluation to ascertain that planned services have been provided, that objectives have been fulfilled within the times specified, and that consumers and families are satisfied with the individual program plan and its implementation . . . ”

9. Welfare and Institutions Code section 4685 provides in part:

“(a) Consistent with state and federal law, the Legislature finds and declares that children with developmental disabilities most often have greater opportunities for educational and social growth when they live with their families. The Legislature further finds and declares that the cost of providing necessary services and supports which enable a child with developmental disabilities to live at home is typically equal to or lower than the cost of providing out-of-home placement. The Legislature places a high priority on providing opportunities for children with developmental disabilities to live with their families, when living at home is the preferred objective in the child’s individual program plan.

(b) It is the intent of the Legislature that regional centers provide or secure family support services that do all of the following:

(1) Respect and support the decisionmaking authority of the family.

(2) Be flexible and creative in meeting the unique and individual needs of families as they evolve over time.

(3) Recognize and build on family strengths, natural supports, and existing community resources.

(4) Be designed to meet the cultural preferences, values, and lifestyles of families.

(5) Focus on the entire family and promote the inclusion of children with disabilities in all aspects of school and community.

(c) In order to provide opportunities for children to live with their families, the following procedures shall be adopted:

(1) The department and regional centers shall give a very high priority to the development and expansion of services and supports designed to assist families that are caring for their children at home, when that is the preferred objective in the individual program plan. This assistance may include, but is not limited to specialized medical and dental care, special training for parents, . . . and advocacy to assist persons in securing income maintenance, educational services, and other benefits to which they are entitled.

(2) When children with developmental disabilities live with their families, the individual program plan shall include a family plan component which describes those services and supports necessary to successfully maintain the child at home. Regional centers shall consider every possible way to assist families in maintaining their children at home, when living at home will be in the best interest of the child, before considering out-of-home placement alternatives . . .

(3) To ensure that these services and supports are provided in the most cost-effective and beneficial manner, regional centers may utilize innovative service-delivery mechanisms, including, but not limited to, vouchers; alternative respite options such as foster families, vacant community facility beds, crisis child care facilities; and alternative child care options such as supplemental support to generic child care facilities and parent child care cooperatives.

(4) If the parent of any child receiving services and supports from a regional center believes that the regional center is not offering adequate assistance to enable the family to keep the child at home, the parent may initiate a request for fair hearing as established in this division. A family shall not be required to start a placement process or to commit to placing a child in order to receive requested services . . . ”

10. The foregoing statutory and regulatory authority may be summarized as follows in the context of this proceeding:

The determination of which services and supports are necessary for each consumer is made through the IPP process on the basis of the consumer’s needs and preferences of the consumer or, when appropriate, the needs and preferences of the consumer’s family. The ultimate decision concerning a consumer’s services and supports is made by agreement between the regional center representatives and the consumer (or the consumer’s family) at the IPP meeting. The decision must include consideration of a range of service options, the effectiveness of each option in meeting the goals stated in the IPP, and the cost-effectiveness of each option. Regional centers must comply with the request of a consumer, or where appropriate, the consumer’s parents, that a designated representative receive written notice of all meetings to develop or revise the consumer’s IPP, and the consumer (or the consumer’s family or representative) must be given the opportunity to participate in the consumer’s IPP

process. If an agreement cannot be reached, there is a right to a fair hearing to contest the service agency's determination.

Resolution of the Issues

11. Did the service agency's denial of a request for funding to permit one of Claimant's parents to attend the 2005 Defeat Autism Now conference in Long Beach, California, violate the Lanterman Act?

No.

First, no signed IFSP and no signed IPP required funding. Second, in deciding not to authorize funding, the RCOC took into account Claimant's parents' preference, which was balanced against the range of service options designed to meet the same goals, the effectiveness of each option including personal attendance at the DAN Conference, and the cost-effectiveness of each option. Third, the service agency did not have a blanket policy of denying all requests for funding to attend conferences; rather, funding was determined on an individual basis according to needs. Finally, it was not established by a preponderance of the evidence that the RCOC unreasonably failed to do consider any relevant information in reaching its decision to deny funding. All relevant information was considered.

12. Does the service agency's written procedure 502 - related to funding attendance at conferences - violate the Lanterman Act or, in the alternative, did the service agency's application of its written policy in this matter violate the Lanterman Act?

No.

Procedure 502 was designed to support family participation at seminars and conferences which provided beneficial information that would enhance a family's knowledge of the family member's developmental disability. To that extent, procedure 502 entirely consistent with the Lanterman Act.

The specific process set forth in procedure 502, including a review by the URG and modifying an IPP if funding were granted, was also consistent with the Lanterman Act. While Procedure 502 did not include a provision for a family member to attend the URG meeting where the request for funding was being presented, nor a provision authorizing anyone other than the service coordinator to make such a presentation at a URG meeting, it did provide for the service coordinator to present the family's request and reasons for it. Procedure 502 did not require the denial of all requests; it set forth a process that was to be followed in evaluating the requests.

The application of procedure 502 in this matter did not result in the establishing or in the modification of an IPP (since there was no IPP to be modified), it took into account Claimant's parents' request for funding, it balanced their preference to personally attend the 2005 DAN conference against the range of other service options designed to meet the same

goals, and considered the cost-effectiveness of each option. All relevant information was considered.

13. Did the service agency violate the Lanterman Act by failing to provide Claimant's parents with notice of the utilization resource group meeting in which the service denied their request for funding to attend the 2005 Defeat Autism Now conference?

No.

Brumett, the service coordinator, prepared a draft IPP that was sent to Claimant's parents. That draft contained information about Claimant's situation including the parents' desire "to attend the Defeat Autism Now (DAN) conference in October." The IPP draft stated Brumett would submit their request for funding to the URG. To that extent, notice of the meeting was actually given. While Brumett did not provide David with notice of the specific meeting date or with the opportunity to attend that meeting, the request for funding was fairly communicated and considered. No evidence was offered to establish that there was not a full and fair hearing on the request. There was no a violation of the Lanterman Act under the circumstances.

14. Did the service agency violate the Lanterman Act by denying Claimant's parents the opportunity to participate in the development of Claimant's IPP?

No.

On September 1 or 2, 2005, Brumett met with Claimant's parents, and with several providers of services including Nicole Omstead, Christina Galeano to collaborate and prepare an IPP. An IPP was never finalized due to disagreements between the parents and the service agency.

David essentially argued that since the IPP was required to be modified after funding was granted which authorized a family member to attend a conference that the meeting resulting in such authorization was a meeting for the development of an IPP. That argument missed the mark. The requirement that the IPP be amended was not to show that there was an IPP agreement or disagreement, or the need or lack of need for services, but to serve an accounting purpose.

It was not established that claimant's parents were denied the opportunity to participate in the development of Claimant's IPP. To the contrary, they were active participants in a meeting that was held to develop an IPP and have actively participated thereafter by filing requests for fair hearings contesting service agency determinations.

15. What remedy, if any, should be provided for any violation(s) of the Lanterman Act in this matter?

None.

No substantial violation of the Lanterman Act was established. When all is said and done, this dispute really involved Claimant's parents not getting financial assistance from the service to attend the 2005 DAN Conference. They did not attend the conference and, according to David, they found the alternatives to personal attendance to be less than suitable.

This dispute was full of sound and fury, but ultimately it was not established that the service agency failed to provide Claimant or her parents with any appropriate services or supports or failed to provide Claimant and her parents with reasonable access to such services and supports.

ORDER

The appeal is dismissed in its entirety. Claimant and her parents shall take nothing by way of this appeal.

NOTICE

This is the final administrative decision. Both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within ninety days.

Dated:

James Ahler
Administrative Law Judge
Office of Administrative Hearings